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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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17 **Scott Johnson**

18 Plaintiff,

19 v.

20 **The Madden Family Limited
21 Partnership**, a California Limited
22 Partnership;
23 **N. Main Street, Inc.**, a California
24 Corporation;
25 **Arian & Darian Company**, a
26 California Corporation

27 Defendants.

28 **Case No.**

29 **Complaint For Damages And
30 Injunctive Relief For Violations
31 Of: Americans With Disabilities
32 Act; Unruh Civil Rights Act**

33 Plaintiff Scott Johnson complains of The Madden Family Limited
34 Partnership, a California Limited Partnership; N. Main Street, Inc., a
35 California Corporation; Arian & Darian Company, a California Corporation;
36 and alleges as follows:

37
38 **PARTIES:**

39 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a

1 level C-5 quadriplegic. He cannot walk and also has significant manual
2 dexterity impairments. He uses a wheelchair for mobility and has a specially
3 equipped van.

4 2. Defendants The Madden Family Limited Partnership and N. Main
5 Street, Inc. owned the real property located at or about 1358 N Main St,
6 Walnut Creek, California, in April 2021.

7 3. Defendants The Madden Family Limited Partnership and N. Main
8 Street, Inc. own the real property located at or about 1358 N Main St, Walnut
9 Creek, California, currently.

10 4. Defendant Arian & Darian Company owned Main Street Kitchen
11 located at or about 1358 N Main St, Walnut Creek, California, in April 2021.

12 5. Defendant Arian & Darian Company owns Main Street Kitchen
13 (“Restaurant”) located at or about 1358 N Main St, Walnut Creek, California,
14 currently.

15 6. Plaintiff does not know the true names of Defendants, their business
16 capacities, their ownership connection to the property and business, or their
17 relative responsibilities in causing the access violations herein complained of,
18 and alleges a joint venture and common enterprise by all such Defendants.
19 Plaintiff is informed and believes that each of the Defendants herein is
20 responsible in some capacity for the events herein alleged, or is a necessary
21 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
22 the true names, capacities, connections, and responsibilities of the Defendants
23 are ascertained.

24

25 **JURISDICTION & VENUE:**

26 7. The Court has subject matter jurisdiction over the action pursuant to 28
27 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
28 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

1 8. Pursuant to supplemental jurisdiction, an attendant and related cause
2 of action, arising from the same nucleus of operative facts and arising out of
3 the same transactions, is also brought under California's Unruh Civil Rights
4 Act, which act expressly incorporates the Americans with Disabilities Act.

5 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
6 founded on the fact that the real property which is the subject of this action is
7 located in this district and that Plaintiff's cause of action arose in this district.

8

9 **FACTUAL ALLEGATIONS:**

10 10. Plaintiff went to the Restaurant in April 2021 with the intention to avail
11 himself of its goods or services motivated in part to determine if the
12 defendants comply with the disability access laws. Not only did Plaintiff
13 personally encounter the unlawful barriers in April 2021, but he wanted to
14 return and patronize the business several times but was specifically deterred
15 due to his actual personal knowledge of the barriers gleaned from his
16 encounter with them.

17 11. The Restaurant is a facility open to the public, a place of public
18 accommodation, and a business establishment.

19 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
20 to provide wheelchair accessible dining surfaces in conformance with the ADA
21 Standards as it relates to wheelchair users like the plaintiff.

22 13. The Restaurant provides dining surfaces to its customers but fails to
23 provide any wheelchair accessible dining surfaces.

24 14. One problem that plaintiff encountered was the lack of sufficient knee
25 or toe clearance under the inside and outside dining surfaces for wheelchair
26 users.

27 15. Plaintiff believes that there are other features of the dining surfaces that
28 likely fail to comply with the ADA Standards and seeks to have fully compliant

1 dining surfaces for wheelchair users.

2 16. On information and belief, the defendants currently fail to provide
3 wheelchair accessible dining surfaces.

4 17. Additionally, on the date of the plaintiff's visit, the defendants failed to
5 provide wheelchair accessible door hardware in conformance with the ADA
6 Standards as it relates to wheelchair users like the plaintiff.

7 18. The Restaurant provides door hardware to its customers but fails to
8 provide any wheelchair accessible door hardware.

9 19. A problem that plaintiff encountered was that the entrance door
10 hardware had pull bar style handle that required tight grasping to operate.

11 20. Plaintiff believes that there are other features of the door hardware that
12 likely fail to comply with the ADA Standards and seeks to have fully compliant
13 door hardware for wheelchair users.

14 21. On information and belief, the defendants currently fail to provide
15 wheelchair accessible door hardware.

16 22. These barriers relate to and impact the plaintiff's disability. Plaintiff
17 personally encountered these barriers.

18 23. As a wheelchair user, the plaintiff benefits from and is entitled to use
19 wheelchair accessible facilities. By failing to provide accessible facilities, the
20 defendants denied the plaintiff full and equal access.

21 24. The failure to provide accessible facilities created difficulty and
22 discomfort for the Plaintiff.

23 25. The defendants have failed to maintain in working and useable
24 conditions those features required to provide ready access to persons with
25 disabilities.

26 26. The barriers identified above are easily removed without much
27 difficulty or expense. They are the types of barriers identified by the
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous
2 alternative accommodations that could be made to provide a greater level of
3 access if complete removal were not achievable.

4 27. Plaintiff will return to the Restaurant to avail himself of its goods or
5 services and to determine compliance with the disability access laws once it is
6 represented to him that the Restaurant and its facilities are accessible. Plaintiff
7 is currently deterred from doing so because of his knowledge of the existing
8 barriers and his uncertainty about the existence of yet other barriers on the
9 site. If the barriers are not removed, the plaintiff will face unlawful and
10 discriminatory barriers again.

11 28. Given the obvious and blatant nature of the barriers and violations
12 alleged herein, the plaintiff alleges, on information and belief, that there are
13 other violations and barriers on the site that relate to his disability. Plaintiff will
14 amend the complaint, to provide proper notice regarding the scope of this
15 lawsuit, once he conducts a site inspection. However, please be on notice that
16 the plaintiff seeks to have all barriers related to his disability remedied. See
17 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
18 encounters one barrier at a site, he can sue to have all barriers that relate to his
19 disability removed regardless of whether he personally encountered them).

20

21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
22 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
23 Defendants.) (42 U.S.C. section 12101, et seq.)

24 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
25 again herein, the allegations contained in all prior paragraphs of this
26 complaint.

27 30. Under the ADA, it is an act of discrimination to fail to ensure that the
28 privileges, advantages, accommodations, facilities, goods and services of any

1 place of public accommodation is offered on a full and equal basis by anyone
2 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
3 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,
5 or procedures, when such modifications are necessary to afford
6 goods, services, facilities, privileges, advantages, or
7 accommodations to individuals with disabilities, unless the
8 accommodation would work a fundamental alteration of those
9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is
11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
12 defined by reference to the ADA Standards.
- 13 c. A failure to make alterations in such a manner that, to the
14 maximum extent feasible, the altered portions of the facility are
15 readily accessible to and usable by individuals with disabilities,
16 including individuals who use wheelchairs or to ensure that, to the
17 maximum extent feasible, the path of travel to the altered area and
18 the bathrooms, telephones, and drinking fountains serving the
19 altered area, are readily accessible to and usable by individuals
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 31. When a business provides facilities such as dining surfaces, it must
22 provide accessible dining surfaces.

23 32. Here, accessible dining surfaces have not been provided in
24 conformance with the ADA Standards.

25 33. When a business provides facilities such as door hardware, it must
26 provide accessible door hardware.

27 34. Here, accessible door hardware has not been provided in conformance
28 with the ADA Standards.

1 35. The Safe Harbor provisions of the 2010 Standards are not applicable
 2 here because the conditions challenged in this lawsuit do not comply with the
 3 1991 Standards.

4 36. A public accommodation must maintain in operable working condition
 5 those features of its facilities and equipment that are required to be readily
 6 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

7 37. Here, the failure to ensure that the accessible facilities were available
 8 and ready to be used by the plaintiff is a violation of the law.

9

10 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
 11 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 12 Code § 51-53.)**

13 38. Plaintiff repleads and incorporates by reference, as if fully set forth
 14 again herein, the allegations contained in all prior paragraphs of this
 15 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
 16 that persons with disabilities are entitled to full and equal accommodations,
 17 advantages, facilities, privileges, or services in all business establishment of
 18 every kind whatsoever within the jurisdiction of the State of California. Cal.
 19 Civ. Code §51(b).

20 39. The Unruh Act provides that a violation of the ADA is a violation of the
 21 Unruh Act. Cal. Civ. Code, § 51(f).

22 40. Defendants’ acts and omissions, as herein alleged, have violated the
 23 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
 24 rights to full and equal use of the accommodations, advantages, facilities,
 25 privileges, or services offered.

26 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
 27 discomfort or embarrassment for the plaintiff, the defendants are also each
 28 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-

(c).)

42. Although the plaintiff encountered frustration and difficulty by facing discriminatory barriers, even manifesting itself with minor and fleeting physical symptoms, the plaintiff does not value this very modest physical personal injury greater than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: May 18, 2021

CENTER FOR DISABILITY ACCESS

By:

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Attorney for plaintiff